

Before the
Federal Communications Commission
Washington, D.C. 20554

FEB 6 2003

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	
FM Broadcast Stations.)	
(Ravenswood, West Virginia and Racine, Ohio))	MB Docket No. 03-22
)	RM-10597
)	
(Conway and Vilonia, Arkansas))	MB Docket No. 03-23✓
)	RM-10633
)	

NOTICE OF PROPOSED RULE MAKING

Adopted January 29, 2002

Released: January 31, 2003

Comment Date: March 24, 2003

Reply Comment Date: April 8, 2003

By the Assistant Chief, Audio Division:

1. Before the Audio Division for consideration is a multiple docket *Notice of Proposed Rule Making* setting forth two separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules to reallocate channels in two localities. Each proposal involves a change of community of license that would provide a first local transmission service at the proposed community. Each petitioner, Legend Communications of West Virginia, LLC, licensee of Station WLWF(FM), and Creative Media, Inc., licensee of Station KASR(FM), Conway, Arkansas, states that it will file an application for construction permit at each locality to effectuate the change of community if the channel is reallocated. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. Each of the petitioners filed its proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.¹ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This decision is based on the FM Allotment priorities.²

¹ See *Change of Community R&O*, 4 FCC Rcd 4870 (1989). *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² The FM Allotment priorities are: (1) First full-time aural service. (2) Second full-time aural service. (3) first local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88 (1982).

3. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 03-22; RM-10597

Petitioner: Legend Communicationsof West Virginia, LLC ("Legend")
c/o Christina T. Brumley, Esq.
Jackson & Kelly PLLC
P.O. Box 553
Charleston, West Virginia 25322

Proposal: Reallot Channel 226A from Ravenswoa , West Virginia, to Racine, Ohio, as the community's **first** local aural transmission service, and modify the license for Station WLWF(FM)'s license to reflect the change of community.

<u>Community</u>	<u>Channel</u>	
	<u>Present</u>	<u>Proposed</u>
Ravenswood, West Virginia	226A	---
Racine, Ohio	---	226A

Coordinates: 38-53-36 NL and 81-46-52 WL

Additional Information: Legend presents evidence of the community status of Racine, Ohio? We seek comment on this issue. Channel 226A can be reallocated from Ravenswood, West Virginia to Racine, Ohio at Station WLWF(FM)'s existing transmitter site 14.4 kilometers (9 miles) southeast of the community. Our analysis shows that this proposal would fulfill priority three of the FM Allotment priorities because Racine will receive its first local aural transmission service and Ravenswood will continue to receive local transmission service from Station WMOV(AM). No urbanized areas are involved. Canadian concurrence will be requested for this allotment.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

³ Petitioner states that Vilonia is an incorporated community with a 2000 U.S. Census population of **2,106** persons. It has its own zip code and post office, and an elected mayor and city council. The city provides police protection and the community has a volunteer fire department. There are water and sewer services, a school district with elementary through **high** school. There is a public library, numerous churches, businesses and medical services.

B. MB Docket No. 03-23; RM-10633

Petitioner: Creative Media, Inc. ("Creative")
do Eugene T. Smith, Esq.
 PO Box 15541
 Washington, DC 20003

Proposal: Substitute Channel 224C3 for Channel 224A at Conway, Arkansas, and reallocate Channel 224C3 from Conway to Vilonia, Arkansas as the community's first **local aural** transmission service, and modify the license for Station KASR(FM) to reflect the changes.

<u>Community</u>	<u>Channel</u>	
	<u>Present</u>	<u>Proposed</u>
Conway, Arkansas	224A, 286C1	286C1
Vilonia, Arkansas	—	224C3

Coordinates: 35-05-02NL and 92-04-59 WL

Additional Information: Creative presents evidence of the community status of Vilonia, Arkansas. We seek comment on this issue. Creative also states that the change of community will serve the public interest because it will provide Vilonia with its first local service and will not deprive Conway of its sole local service. It also states that Channel 224A was allotted as a 3kW Class A station and cannot increase power to 6kW at Conway and therefore the change of community will facilitate its increase in service area. Our analysis shows that this proposal would fulfill priority three of the FM Allotment priorities because Vilonia would receive its first local aural transmission service and Conway would continue to receive local transmission service from four other stations.⁴ A preliminary engineering analysis shows that from the proposed transmitter site, there is a **loss** in service to an area with a population of approximately 12,000 persons, but the listeners in this area will continue to receive service from at least 5 or more aural services. There will be a gain in service to an area with a population of over 250,000 persons. No urbanized areas are involved. Channel 224C3 can be reallocated from Conway to Vilonia, Arkansas, at Creative's requested site 12.7 kilometers (7.9 miles) east of the community.

FCC Contact: Victoria M. McCauley, Mass Media Bureau (202) 418-2180.

4. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference only the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 24, 2003, and reply comments on or before April 8, 2003, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

⁴ Stations KCON(AM), KTOD(AM), non-commercial educational station KUCA(FM), and KMJX(FM) also serve Conway as transmission services.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁵

7. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁵ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections **0.61**, 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Information Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington D.C. 20554.